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VIA FEDERAL EXPRESS

May 20, 2020

Mr. Perry R. Sanders, Jr.
Sanders Law Firm
31 North Tejon, Suite 400
Colorado Springs, CO 80903
Email: PRSanders@PerrySandersLaw.com

Mr. Wayne Drash
Lead Stories LLC
31 North Tejon Street, Suite 405
Colorado Springs, CO 80903
Email: reporters@leadstories.com

Dear Mr. Sanders and Mr. Drash,

We represent the Informed Consent Action Network and Del Bigtree (collectively, “ICAN”) and write with regard to an article posted by Lead Stories LLC and written by Wayne Drash (collectively, “Lead Stories”) entitled “Fact Check: W.H.O. Chief Scientist NOT Caught Lying to the Public” (the “Article”). Based on this Article, Lead Stories placed or caused to be placed a “False Information” label on a video published by ICAN on Facebook with the title “W.H.O. Chief Scientist Caught Lying to the Public.”

Enclosed is a draft defamation complaint against Lead Stories regarding the Article and the “False Information” label placed on ICAN’s video. If Lead Stories removes the “False Information” label on or before May 27, 2020, ICAN will not commence this action. On the other hand, if Lead Stories does not remove the “False Information” label, ICAN intends to initiate an action for injunctive relief and to recover its damages.

Govern yourselves accordingly.

Very truly yours,



Aaron Siri, Esq.

Enclosure

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

THE INFORMED CONSENT ACTION NETWORK,
and DEL BIGTREE,

Plaintiffs,

-against-

LEAD STORIES LLC and WAYNE DRASH,

Defendants.

Case No. _____

ORIGINAL COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs the Informed Consent Action Network (“ICAN”), and Del Bigtree (collectively “Plaintiffs”), by their attorneys Siri & Glimstad LLP, as for their Complaint allege on personal information as to themselves and on information and belief as to all other things:

INTRODUCTION

1. ICAN, and its founder Mr. Bigtree, are committed to providing the public with accurate information about health related issues in order to allow them to make informed medical decisions. As part of this mission they produced a video that shows two clips featuring the Chief Scientist for the World Health Organization (“W.H.O.”), Dr. Soumya Swaminathan. In the first clip, a slick promotional video, Dr. Swaminathan proudly describes to viewers how “we have robust vaccine safety systems” and that the “W.H.O. works closely with countries to make sure that vaccines can do what they do best, prevent disease without risks.” In the second clip from a few days later, Dr. Swaminathan says at a W.H.O. meeting that “we cannot over emphasize the fact that we really do not have very good [vaccine] safety monitoring systems in many countries.” These two incompatible statements, a rosy and confident statement to the public, and a different troubling one at a W.H.O. gathering, deeply concerned ICAN and Mr. Bigtree, and they wanted to

publicize these statements to encourage a discussion regarding the problems with the safety systems Dr. Swaminathan discussed. Therefore, they spent time and money to produce the video showing the two clips, and Mr. Bigtree posted the video on his Facebook page giving it the title: “W.H.O. CHIEF SCIENTIST CAUGHT LYING TO THE PUBLIC.”

2. In 2019, Facebook entered into an agreement with Defendant Lead Stories LLC (and together with Wayne Drash, “Lead Stories”), a for-profit company, to fact-check and classify posts on Facebook’s social media platform. Facebook pays Lead Stories hundreds of thousands of dollars a year, and Lead Stories earns additional money by selling advertising on its fact-checking website. When Lead Stories classifies a post with one of the “False” classifications, Facebook limits the post’s distribution, prominently displays a label of “False Information” over the post and provides a prominent link to Lead Stories’ website. But this prominent link only appears if the post receives a “False” classification, if the post receives a milder classification like “Opinion,” that prominent link to Lead Stories’ website does not appear. Therefore, Lead Stories has an incentive to categorize as many posts as it can as “False” both to please its benefactor, Facebook, and to drive traffic to its own website.

3. Facebook asked Lead Stories to classify ICAN’s video and Mr. Bigtree’s post. Lead Stories wrote an article that largely agreed with the concerns raised by ICAN’s video. It noted that the video “is nicely done” and that by juxtaposing Dr. Swaminathan’s incompatible statements the video “raise[ed] pertinent questions” that need to be answered. The article also describes how Lead Stories asked the W.H.O. to provide an explanation for Dr. Swaminathan’s statements, but the organization could not explain away the troubling problems with her statements. Lead Stories’ only “issue with this post is with the headline” because it said that Mr. Bigtree could not know for certain that Dr. Swaminathan was lying without knowing her subjective

intent. In other words, it simply stated that Mr. Bigtree's conclusion that Dr. Swaminathan was lying was just his opinion, rather than a factual conclusion.

4. Nonetheless, Lead Stories did not classify the video as "Opinion" in Facebook's system, instead Lead Stories chose to classify it as "False". As a direct result of Lead Stories' classification decision, Facebook limited the video's distribution and discourage people from sharing the video. It further grayed out the video and displayed a message that the video contained "False Information", and in an explanatory window it tells the viewer that the video's "primary claims . . . are factually inaccurate," that it was "misleading," and that "there is no evidence she was 'lying.'" All of these conclusions are false, and Lead Stories' article supports none of these statements. Nevertheless, each of these statements does great harm to ICAN and Mr. Bigtree whose professional reputations are built on providing accurate information to the public. Lead Stories intentionally chose the inaccurate "False" classification because doing so would ensure that Facebook would link to its own article, and thereby also further its partnership with Facebook. ICAN and Mr. Bigtree asked Lead Stories to change the classification, but Lead Stories ignored their request. As a result, they now have no choice other than to bring this action for defamation seeking damages and injunctive relief.

PARTIES AND PERSONAL JURISDICTION

5. The Informed Action Consent Network, or ICAN, is a not-for-profit organization whose mission is to raise awareness about public health safety and provide the public with accurate information to give informed consent regarding related health interventions. As part of its mission, ICAN investigates and disseminates information regarding public health safety issues, including through their website, postings on social media, and through press events and releases.

6. Del Bigtree is the paid executive founder of ICAN, and is the host of a rapidly growing internet talk show The HighWire, boasting over 33 million views to date. His Facebook page has over 250,000 followers and a 4.4 out of 5 rating from users. Mr. Bigtree is one of the most sought after public speakers in the natural health arena, often gathering audiences in the thousands who travel from around the world to hear his unique blend of passion and scientific expertise. He is the recipient of multiple awards including an Emmy Award, Best Drama at the New York Television Festival, and the Health Freedom Hero Award from the National Health Freedom Federation, the oldest natural health organization in America. Mr. Bigtree resides in Austin, Texas.

7. Lead Stories LLC is a Colorado limited liability company. On information and belief, its members reside in Colorado, California, Florida, and Belgium. It operates a website at the URL leadstories.com.

8. Lead Stories is subject to general and specific personal jurisdiction in Texas. It transacts substantial business in Texas and committed multiple acts of defamation and intentional torts, in whole or part, in Texas. It has minimum contacts with Texas such that the exercise of personal jurisdiction over it comports with traditional notions of fair play and substantial justice and is consistent with the Due Process clause of the United States Constitution. Lead Stories' defamation was purposefully directed at Texas and was continuous and systematic. Plaintiffs' claims directly arise from and relate to Lead Stories' publication of false and defamatory statements in Texas.

9. Wayne Drash is a staff writer and fact-checker for Lead Stories and the author of the Article.

SUBJECT MATTER JURISDICTION AND VENUE

10. The United States District Court for the Western District of Texas has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (Diversity Jurisdiction) and 28 U.S.C. § 1367 (Supplemental Jurisdiction). The parties are citizens of different States and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest, costs and fees.

11. Venue is proper in the Austin Division of the United States District Court for the Western District of Texas. Bigtree is a resident of Austin, Texas. ICAN is incorporated in Texas and has its principal place of business in Austin, Texas. Lead Stories published defamatory statements to a wide audience which includes persons who reside within the Austin Division. Lead Stories' defamation caused substantial harm to Plaintiffs' personal and professional reputations in Texas. A substantial part of the events giving rise to the claims stated in this action occurred in the Western District of Texas.

STATEMENT OF MATERIAL FACTS

A. Facebook's Post Rating System

12. Following the 2016 election, Facebook faced significant pressure to take action regarding the perceived problem of "fake news" appearing on its social media platform. Facebook apparently chose to out-source the fact checking of its content to third-party fact-checkers. Facebook partnered with these third-party entities to weed through postings collected by Facebook and identified as potentially false. The fact checkers then review the postings' content and classify the posting.

13. On information and belief, Facebook created a classification system which provides its fact-checkers with a limited set of nine pre-populated classifications to apply to a posting:¹

- False
- Partly False
- True
- False Headline
- Not Eligible
- Satire
- Opinion
- Prank Generator
- Not Related

14. According to Facebook, if one of Facebook’s fact-checkers classifies content as “false,” “partly false,” or “false headline,” the content’s distribution on the platform is reduced, and the platform notifies users who share the post that it has been so classified. Facebook also places a warning over such content identifying the content as containing “False Information” and offering a link to “See Why.” If the user clicks on the “See Why” button, Facebook presents a window entitled “Conclusion: False.” The window tells the user that “[t]he primary claims in the information are factually inaccurate.” In the middle of the window, in a gray box, Facebook displays a link to the fact-checker’s article with a short blurb written explaining the fact-checker’s conclusion.

¹ These options, and their definitions, can be found here: <https://www.facebook.com/help/publisher/182222309230722>.

15. On information and belief, if a fact-checker rules that an article falls into any of the other six classifications (*i.e.*, True, Not Eligible, Satire, Opinion, Prank Generator, and Not Related) Facebook does not display (or does not prominently display) a link to the “See Why” window or to the fact-checker’s article.

16. Initially, Facebook asked these third-party fact-checkers to provide their services for free. However, on information and belief, starting in 2017, Facebook began paying some of its fact-checkers, in many cases paying them hundreds of thousands of dollars. According to a report by the Columbia Journalism Review, several of these third-party entities refused to accept the money from Facebook out of concern that it would affect those entities’ judgment and independence.² Other fact-checkers, like Lead Stories, “gladly took” Facebook’s money.

B. Lead Stories’ Partnership with Facebook

17. Lead Stories is a for-profit company. It sells access to a software product called TrendolizerTM PRO, which according to its website is a tool for tracking and analyzing what online postings are “trending on the web.”³ It also operates a website, leadstories.com, which claims to be a “fact checking and debunking website” that “hunt[s] for trending stories from known fake news, satire or prank websites in order to debunk them as quickly as possible.”⁴

18. Starting in February 2019, Lead Stories entered into a partnership with Facebook to become one of Facebook’s third-party fact-checkers. Under this arrangement, Facebook pays Lead Stories to classify content. In 2018 and 2019, its deal with Facebook paid for all of Lead

² https://www.cjr.org/tow_center/facebook-fact-checking-partnerships.php

³ See <http://get.trendolizer.com>

⁴ See <https://leadstories.com/about.html>

Stories' operating expenses and provided tens of thousands of dollars in profit to Lead Stories.⁵ Specifically, Facebook paid Lead Stories \$102,000 in 2018 and \$359,000 in 2019. Thus, the Facebook deal has been extremely lucrative for Lead Stories.

19. In addition to its income from the Facebook deal, Lead Stories also generates tens of thousands of dollars in additional income each year by selling advertising on its website.

C. ICAN's Video

20. ICAN's video is very simple. ICAN simply juxtaposed two video clips stating two diametrically opposing factual conclusions. Both clips feature Dr. Swaminathan, the Chief Scientist at the W.H.O. The first video clip is a promotional video aimed at the general public and was released by the W.H.O. on November 28, 2019. In it, Dr. Swaminathan confidently tells the viewer that "we have robust vaccine safety systems that allow health workers and experts to react immediately to problems that may arise." She further asserts that these systems allow experts to "rigorously and scientifically look at the data and then promptly address the problem" and that the "W.H.O. works closely with countries to make sure that vaccines can do what they do best, prevent disease without risks."

21. The second video clip shows Dr. Swaminathan speaking to the Global Vaccine Safety Summit just five days after the W.H.O. released the promotional video. She tells that summit, "I think we cannot over emphasize the fact that we really do not have very good safety monitoring systems in many countries." She explains that this lack of safety systems results in the W.H.O. not being able to "give clear cut answers about the deaths that have occurred due to a particular vaccine." She then says that, like many drugs, we have "learned about adverse events

⁵ <https://leadstories.com/about.html> (stating that Lead Stories expenses over the last two years were (i) the cost of it staff, which was \$91,920 in 2018 and \$299,849 in 2019, and (ii) the cost of hosting the website, which amounted to \$960 both years).

[regarding vaccines] only after the drug has been licensed and introduced to the population. So that risk is always there and the population needs to understand that[.]”

22. The fact that the Chief Scientist of the W.H.O. was not being honest with the public in a promotional video about the problems that she admitted to when speak at the W.H.O. summit a few days later troubled ICAN greatly. Therefore, ICAN produced the video showing both clips, and in early January 2020 Mr. Bigtree posted the video on his Facebook page for his online talk show “The HighWire with Del Bigtree.” When posting the video, Mr. Bigtree titled it “W.H.O. CHIEF SCIENTIST CAUGHT LYING TO THE PUBLIC.”

D. The Fact-Check Article

23. After Mr. Bigtree posted the video, Facebook apparently flagged the story for Lead Stories to evaluate and classify as part of its partnership.

24. Lead Stories evaluated ICAN’s video and did not take issue with its content. Lead Stories wrote an article regarding the video (“Lead Stories’ Article”) in which it agreed with ICAN that Dr. Swaminathan’s two statements are inconsistent.⁶ After describing Dr. Swaminathan’s rosy statements in her public video, Lead Stories’ Article notes that in the private gathering, “[i]nstead of boasting [sic] about ‘robust vaccine safety systems,’ Swaminathan describes a flawed system.” Lead Stories’ Article admitted that the video does “raise pertinent questions” regarding Dr. Swaminathan’s statements and the safety systems she was discussing.

25. Lead Stories goes on to tell the reader that it reached out to the W.H.O. for comment, but that the explanations the W.H.O. provided to Lead Stories for Dr. Swaminathan’s

⁶ <https://leadstories.com/hoax-alert/2020/01/Fact-Check-WHO-Chief-Scientist-NOT-Caught-Lying-To-The-Public.html>

two inconsistent statements fell “far short of a full answer in addressing Swaminathan's comments of not having ‘very good safety monitoring systems in many countries.’”

26. Lead Stories’ only “issue with [the Video] is with the headline accusing the chief scientist [Dr. Swaminathan] of ‘lying.’” Lead Stories’ Article tries to explain that in order to accuse a person of lying “one would have to know her intent” and, because Mr. Bigtree does not claim to know Dr. Swaminathan’s intent, he cannot claim she is lying. Nevertheless, Lead Stories titled the article: “W.H.O. Chief Scientist NOT Caught Lying To The Public,” implying that it somehow knew Dr. Swaminathan's intent was to not lie, and shows a picture of the video with the label “Misleading” in large red lettering over that image.⁷

27. At the most, Lead Stories’ Article shows that Mr. Bigtree’s conclusion in his title, that Dr. Swaminathan was “lying,” was his opinion. Courts deal every day in assessing the veracity of witnesses, and courts long ago concluded that a witness can testify that he or she thought another person was lying because that simply “is an *opinion* of fact,” even if that witness does not know for certain the other person’s subjective intent. *See United States v Keys*, 747 Fed. Appx. 198, 210 (5th Cir 2018), *cert denied*, 139 S. Ct. 847 (2019) (emphasis added) (concluding that a lay witness’s conclusion that a witness lied to the police “is an opinion of fact”); *Lewis v. State*, 500 S.W.2d 167 (Tex. Crim. App. 1973) (holding that a witness could testify as to his “opinion that appellant was lying when he denied participation in the robbery”).

⁷ By Lead Stories’ own standards, its title is guilty of the same thing that it accused Mr. Bigtree of doing. Lead Stories admits the two statements are inconsistent, and it too cannot know Dr. Swaminathan’s intent, therefore, it cannot know that she was “NOT ... Lying to the Public.” If anything, Lead Stories conclusion that there was no lie is worse than Mr. Bigtree’s title because at least Mr. Bigtree’s conclusion in his title is supported by Dr. Swaminathan’s own inconsistent statements in the video, whereas Lead Stories’ assertion is supported by nothing because the WHO refused to clarify Dr. Swaminathan’s contradictory statements.

28. The video speaks for itself. It shows Dr. Swaminathan telling the public that there are “robust vaccine safety systems,” but then admitting just a few days later in private that “we really do not have very good safety monitoring systems” in many places. Those two statements are irreconcilable, a fact made plain by the W.H.O.’s inability to explain them when Lead Stories specifically asked it to provide an explanation.

29. Making two irreconcilable statements, one publicly and the other privately to colleagues, is *prima facie* evidence of lying. Thus, Dr. Swaminathan’s intent is clear on its face - she intended to lie to the public by telling them something far more optimistic and positive than the actual facts would allow. As such, Mr. Bigtree and ICAN believe they had more than adequate evidence to conclude that Dr. Swaminathan was lying to the public.

E. The Incorrect Classification of the Video as False

30. Regardless of ICAN’s disagreement with Lead Stories’ conclusion, what is troubling is how Lead Stories classified the video. From the nine options provided by Facebook, Lead Stories designated the video as “False” rather than as “Opinion.”

31. Because Lead Stories classified the video as “False”, Facebook proceeded as per its fact-checking rules. It grayed out the video, and placed the warning over it:



Fig. 1: Warning

32. When a user clicks the “See Why” button, Facebook displays the “See Why” window for Lead Stories’ article:

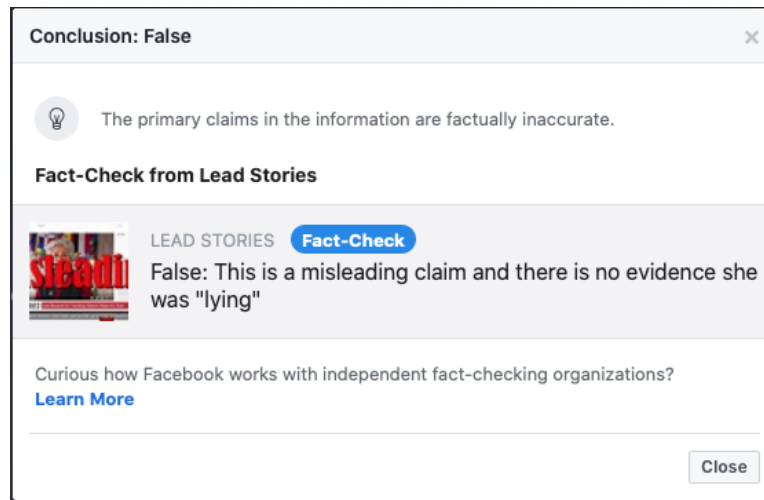


Fig. 2: “See Why” Window

33. These windows make several objectively inaccurate statements:
- a. “The primary claims in the information are factually inaccurate” - This is an incorrect statement because Lead Stories’ Article does not identify any factual inaccuracies in the video or in the title. To the contrary, the Article says that “[T]he video is nicely done.” As noted, the only issue it takes with the video is Mr. Bigtree’s *opinion* that Dr. Swaminathan was lying when she made two different statements to two different audiences, but whether someone is lying is a matter of opinion, not a fact. *See United States v. Keys*, 747 Fed. Appx. 198, 210 (5th Cir 2018), *cert denied*, 139 S. Ct. 847 (2019) (concluding that a lay witness’s conclusion that a witness lied to the police “is an opinion of fact”); *Lewis v. State*, 500 S.W.2d 167 (Tex. Crim. App. 1973) (holding that a witness could testify as to his “opinion that appellant was lying when he denied participation in the robbery”).
 - b. “This is a misleading claim” – This assertion is not supported by the video or by Lead Stories’ Article. Merriam-Webster’s dictionary defines “mislead” to mean:

“to lead in a wrong direction or into a mistaken action or belief often by deliberate deceit.”⁸ There is nothing in the video or Mr. Bigtree’s title that is leading the reader in a wrong direction, and it certainly does not attempt to deliberately mislead the reader. To the contrary, the evidence is clear from the two video clips, which permit the reader to easily see Dr. Swaminathan making two inconsistent statements. If anything, the Lead Stories Article supports the idea that it was Dr. Swaminathan who was misleading the public, not ICAN and Mr. Bigtree.

- c. “False Information” and “Conclusion: False” – This is incorrect because, again, the Lead Stories’ Article never identifies any false statements of fact in the video or in the title.
- d. “[T]here is no evidence she was ‘lying’” – This is not correct and is not supported by the Lead Stories’ Article. The Article concedes that the two statements by Dr. Swaminathan are incompatible and notes that the W.H.O. could not reconcile them when asked to explain. The video shows Dr. Swaminathan boasting to the public about the WHO’s “robust vaccine safety systems” yet telling a W.H.O. gathering that the same safety system is flawed, going so far as to say that “we really don’t have very good safety monitoring systems.” Those two statements provide more than ample evidence that Dr. Swaminathan may have been lying when she recorded the publicity video.

34. Given Lead Stories’ conclusion, ICAN’s video should have been classified under Facebook’s rating system as “Opinion.” By using Facebook’s pre-populated options to mislabel the video, Lead Stories intentionally told the public that ICAN is presenting false information,

⁸ See <https://www.merriam-webster.com/dictionary/mislead>

when it knew that the information presented is accurate and the conclusion in the title is at most an opinion and not false.

35. ICAN's mission is to disseminate accurate health and safety related information to allow the public to make medical decisions from a tangible understanding of the scientific research. Mr. Bigtree is ICAN's founder, and promotes the organization's mission through his internet talk show "The HighWire." By wrongly claiming that ICAN and Mr. Bigtree are presenting factually inaccurate information, Lead Stories has *per se* harmed their professional reputations.

36. Furthermore, due to mislabeling the video as "False," Facebook took a number of steps to decrease its reach. These steps have damaged ICAN and Mr. Bigtree in that they decrease the traffic to ICAN's video and make it harder for ICAN and Mr. Bigtree to achieve their goal of informing the public and sparking a public conversation regarding the issues raised by Dr. Swaminathan's incompatible statements. These have in turn had a pecuniary effect on ICAN and Mr. Bigtree by, among other things, damaging their reputation and decreasing the ability to raise funds.

37. Thus, Lead Stories, which uses advertising to generate revenue and is paid by Facebook to find false stories, intentionally and willfully marked the Video as "False," even though it knew that Mr. Bigtree's title was simply an opinion, in order to generate traffic to its website through the warning and link and to further its partnership with Facebook. The fact checking system Facebook created encourages this type of mislabeling. The Lead Stories fact checkers have an incentive to categorize a post as "False," rather than an accurate and less damaging classification of "Opinion" because that is the only way Facebook will insert the clear warning with a prominent link to the fact-checker's article.⁹ On information and belief, this same

⁹ <https://www.facebook.com/help/publisher/182222309230722>.

warning and prominent link would not appear if the fact checker marks a post as “Satire” or “Opinion”.

F. ICAN Appeals Lead Stories’ Ranking

38. After learning that Lead Stories classified the Video as “false,” ICAN wrote an email to appeals@leadstories.com. ICAN notified Lead Stories that its classification of the Video was incorrect, explained why it should be classified as “opinion” and asked Lead Stories to change the rating. ICAN explained that by incorrectly classifying the video as “false,” Lead Stories was defaming ICAN and damaging its reputation. Lead Stories never responded to ICAN’s email.

39. ICAN, through its counsel, then wrote to Facebook. Again, it explained to Facebook why the Video should not have been classified as false, explained how the incorrect classification was damaging ICAN and its reputation, and asked Facebook to change the rating. Facebook simply replied that it was not responsible for the content on its website and hence would not take any action to correct the rating.

40. Thus, to this day, the Video still remains on Facebook, with the conspicuous “False” classification that Lead Stories caused to be placed on it, incorrectly telling anyone who comes across it that ICAN posted false information. Thus, ICAN is still being damaged to this day with the full knowledge and approval of Lead Stories.

COUNT I DEFAMATION

41. Plaintiffs restate and reallege the previous paragraphs of this Complaint and incorporate them herein by reference.

42. Lead Stories made and published, or caused to be made and published, to third-parties, including Facebook’s users and the public at large, numerous false factual statements,

which are detailed verbatim above, concerning the veracity of the Video and Mr. Bigtree's post regarding the Video.

43. By making the defamatory statements detailed above, Lead Stories knew or should have known that it would wrongly defame Plaintiffs by accusing and imputing to Plaintiffs the claim that they published false information and misled the public.

44. Lead Stories' defamatory statements constitute defamation *per se*. The statements impute to Mr. Bigtree an unfitness to perform the duties of an office or employment for profit, or the want of integrity in the discharge of the duties of such office or employment. Lead Stories' statements also prejudice ICAN and Mr. Bigtree in their profession or trade.

45. Lead Stories' defamatory statements caused ICAN and Mr. Bigtree to suffer loss and injury to their business, insult, pain, embarrassment, humiliation, and mental suffering, harm to ICAN and Mr. Bigtree's reputations, and out-of-pocket loss.

46. Lead Stories made its defamatory statements with actual malice and reckless disregard for the truth because, among other reasons:

- a. Lead Stories knew that Mr. Bigtree's conclusions that Dr. Swaminathan was lying were his opinion, but rather than select the "opinion" option in Facebook's fact-checking system, it chose to mark the story as "false" because doing so would ensure greater traffic to its web site and support its lucrative partnership with Facebook.
- b. Lead Stories told the public that the Video presents "no evidence she [Dr. Swaminathan] was 'lying,'" even though it knew this was not true in that it never questioned the veracity of the video, and from its investigation it knew that Dr. Swaminathan's statements were incompatible, that she told the public one thing but

said the opposite at the W.H.O. summit a few days later, and that her own organization could not explain away the incompatibility, which all provide more than ample evidence to conclude that she was lying.

- c. Lead Stories told the public, or caused Facebook to tell the public, that “[t]he primary claims in the [Video] are factually inaccurate” when it knew that the Video and Mr. Bigtree’s title contained no *factual* inaccuracies.
- d. Lead Stories is telling the public that ICAN and Mr. Bigtree were “misleading” when it had no evidence or reason to believe that the Video and title were actually misleading.
- e. Lead Stories did not act in good faith because, in the total absence of evidence, it could not have had an honest belief in the truth of its defamatory statements about the Video and Mr. Bigtree’s title.
- f. Even after ICAN and Mr. Bigtree raised these issues to Lead Stories’ attention, it ignored the issues and refused to retract its defamatory statements.

47. Lead Stories lacked reasonable grounds for any belief in the truth of its defamatory statements and/or acted negligently in failing to determine the true facts, especially after the truth was raised to its attention.

48. As a direct result of Lead Stories’ defamation, ICAN and Mr. Bigtree suffered, and continue to suffer, substantial damage and loss, including, but not limited to, insult, indignity, damage and injury to their personal and professional reputations, attorney’s fees, costs, and other out-of-pocket expenses in an amount to be determined by the Jury, but not less than \$500,000.00.

49. In addition to recovering monetary damages, ICAN and Mr. Bigtree are entitled to an injunction directing Lead Stories to remove the classification of the Video as “False

Information” and post an appropriate retraction in the Lead Stories’ Article in order to stop the ongoing damage to their reputation and the accumulation of pecuniary damages.

COUNT II
BUSINESS DISPARAGEMENT

50. Plaintiffs restate and reallege the previous paragraphs of this Complaint and incorporate them herein by reference.

51. Lead Stories published false and disparaging information about ICAN and Mr. Bigtree, which is detailed verbatim above.

52. Lead Stories knew its statements were false and defamatory and it acted with the specific intent to injure ICAN and Mr. Bigtree in order to harm their mission and drive more traffic to its website.

53. None of Lead Stories defamatory statements are privileged. Lead Stories had no right to publish false and disparaging information about ICAN and Mr. Bigtree. Lead Stories knew of the falsity of its defamatory statements and acted with wanton, intentional and reckless disregard concerning publication. Lead Stories acted with ill-will and it intended to interfere with the economic interests of ICAN and Mr. Bigtree in an unprivileged fashion.

54. Lead Stories’ defamatory statements and actions constitute business disparagement under Texas Law.

55. Lead Stories’ business disparagement caused, and is continuing to cause, ICAN and Mr. Bigtree to suffer and incur special damages, including loss of income and business and out-of-pocket expenses in an amount to be determined by the Jury, but not less than \$500,000.00.

56. In addition to recovering monetary damages, ICAN and Mr. Bigtree are entitled to an injunction directing Lead Stories to remove the classification of the Video as “False

Information” and post an appropriate retraction in the Lead Stories’ Article in order to stop the ongoing damage to their reputation and the accumulation of pecuniary damages.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, ICAN and Del Bigtree respectfully request the Court to enter Judgment against Lead Stories as follows:

- a. Compensatory damages in an amount to be determined by the Jury, but not less than \$500,000.00;
- b. An injunction ordering Lead Stories to remove the classification of the Video as “False Information” and post an appropriate retraction in the Lead Stories’ Article;
- c. Punitive damages in the maximum amount allowed by Texas Law;
- d. Prejudgment interest on the principal sum awarded to Plaintiff by the Jury from January 30, 2020 to the date of Judgment at the maximum rate allowed by law;
- e. Post judgment interest at the maximum rate allowed by Texas law; and
- a. Costs and such other relief as is just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: May , 2020

THE INFORMED CONSENT ACTION
NETWORK and DELL BIGTREE, in his
Individual and Professional Capacities

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